

REMARKS

The Office Action of April 3, 2009 was received and carefully reviewed. Claims 1-10, 17-23, 25-27, 29-31, 33-36, 38-39, 41-42, 44-47, 49-50, 52-53, and 55-64 were pending prior to the instant amendment. By this amendment, claims 1-4, 8-10, 29, 33, 35, 38, 41, 44, 46, 49, 52, 58 and 63-64 are amended. Consequently, claims 1-10, 17-23, 25-27, 29-31, 33-36, 38-39, 41-42, 44-47, 52-53 and 55-64 are currently pending in the instant application, of which, claims 17-23 and 25-27 are withdrawn. Reconsideration and withdrawal of the currently pending rejections are requested for the reasons advanced in detail below.

Initially, the Examiner is again thanked for the courtesies extended during the Examiner's Interview held on April 21, 2009. As discussed during the interview, claims 1, 5, 33 and 44 were rejected under 35 U.S.C. §102(e) as being anticipated by Sasaki et al. (U.S. Patent No. 5,790,213, hereinafter "Sasaki"). Sasaki, however, fails to render the claimed invention unpatentable, at least, in accordance with the submitted proposed claim amendments which are incorporated as claim amendments within the present response. Each of the claims recite a specific combination of features that distinguishes the invention from the prior art in different ways. For example, independent claim 1 has been amended to recite a combination that includes, among other things:

“. . . an electroluminescence element comprising an organic layer interposed between a pair of electrodes, wherein one of the pair of electrodes is electrically connected to the second thin film transistor . . .”

Independent claims 33 and 44 have been amended to recite yet another combination that includes, *inter alia*,

“. . . an electroluminescence element comprising an organic layer interposed between a pair of electrodes, wherein one of the pair of electrodes is electrically connected to the current control element.”

Support for the aforementioned claim amendments is found, at least, in Applicant's originally filed specification (e.g., paragraph [0086] of Applicant's specification and FIG. 1). Sasaki is directed to an image display device having adjacent pixel overlapping circuit elements. Sasaki includes a liquid crystal display device including pixels, arranged in a two-dimensional matrix on a substrate, for displaying an image, and several types of transistors, fabricated monolithically on the substrate for driving the respective pixels (e.g., see abstract of Sasaki). At the very least, Sasaki fails to disclose or suggest any of the above-mentioned exemplary features recited in the independent claims 1, 33, and 44. Thus, Sasaki does not teach the structure recited by Applicant's claimed invention.

For anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claims are not found either expressly or inherently described as required by the M.P.E.P., Sasaki cannot be said to anticipate the invention as claimed. Hence, withdrawal of the rejection is respectfully requested.

Dependent claim 5 depends from independent claim 1 and is patentable over the cited prior art for at least the same reasons as set forth above with respect to claim 1. In addition, dependent claim 5 also recites a combination that is separately patentable.

Claims 2, 3-4, 6-7, 34, 38, 45, 49, and 55-64 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sasaki in view of Luo (US Patent 4,040,073).

Regarding claims 8-10, 35, 41, 46, and 52, the Examiner states Sasaki teaches merely "substantially the entire claimed structure of claims 1-3, 33 and 44," but does not provide any further rationale or prior art evidence of the structure not disclosed by Sasaki.

Likewise, regarding claims 29-30, the Examiner states Sasaki teaches merely “substantially the entire claimed structure of claims 1-3, and 8-10,” but does not provide any further rationale or prior art evidence of the structure not disclosed by Sasaki.

In similar manner, regarding claims 31, 36, 42, 47, 50, and 53, the Examiner merely states that Sasaki teaches “substantially the entire claimed structure of claims 29, 33, 41, 44, 49, and 52,” but does not provide any further rationale or prior art evidence of the structure not disclosed by Sasaki.

Also, regarding claims 55-64, the Examiner states that Sasaki merely teaches “substantially the entire claimed structure of claims 29, 33, 41, 44, 49, and 52,” but does not provide any further rationale or prior art evidence of the structure not disclosed by Sasaki.

However, each of the aforementioned dependent claims rely upon one of independent claims 2-3, 29, 38, 41, 49, and 52 which have been amended to recite a specific combination of features that distinguishes the invention from Sasaki in different ways, as outlined above. Furthermore, the technology of Luo predates the use of organic layers as recited in the present claims and, therefore, cannot disclose or fairly suggest the claimed structure including, *inter alia*, an electroluminescence element comprising an organic layer interposed between a pair of electrodes, wherein one of the pair of electrodes is electrically connected to a second thin film transistor or a current control elements as recited in claims 2-3, 29, 38, 41, 49, or 52. Hence, at the very least, the applied references fail to disclose or suggest any of these exemplary features recited in independent claims 2-3, 29, 38, 41, 49, and 52.

In accordance with the M.P.E.P. § 2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 409 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a

claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 196 (CCPA 1970). Therefore, it is respectfully submitted that neither Sasaki nor Luo, taken alone or in any proper combination, discloses or suggests the subject matter as recited in claims 2-3, 29, 38, 41, 49, and 52. Hence, withdrawal of the rejection is respectfully requested.

Each of the dependent claims depend from one of independent claims 2-3, 29, 38, 41, 49, or 52 and are patentable over the cited prior art for at least the same reasons as set forth above with respect to claims 2-3, 29, 38, 41, 49, and 52.

In addition, each of the dependent claims also recites combinations that are separately patentable.

Claims 1, 5, 33, and 44 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending Application No. 10/980,603 (‘603). Claims 1, 5, 8, 33, 35, and 44 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of co-pending Application No. 10/337,391 (‘391). Claims 1-10, 29-31, 33-36, 38-39, 41-42, 44-47, 49-50, and 52-53 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-30 of co-pending Application No. 11/258,933 (‘933). Claims 2-4, 34, 38-39, 45, 49, and 50 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of co-pending Application No. 10/980,603 in view of Luo. Claims 2-4, 31, 34, 36, 38-39, 42, 45, 47, 49, 50, and 53 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of co-pending Application No. 10/337,391 in view of Luo.

Applicant respectfully requests that these rejections be held in abeyance until otherwise allowable claims are designated in the instant application.

In view of the foregoing remarks, this claimed invention, as amended, is not rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this response, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

In discussing the specification, claims, and drawings in this response, it is to be understood that Applicant in no way intends to limit the scope of the claims to any exemplary embodiments described in the specification and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 19-2380. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned patent agent at (202) 585-8316.

Respectfully submitted,

NIXON PEABODY, LLP

/Marc W. Butler, Reg. #50,219/
Marc W. Butler
Registration No. 50,219

NIXON PEABODY LLP
CUSTOMER NO.: 22204
401 9th Street, N.W., Suite 900
Washington, DC 20004
Tel: 202-585-8000
Fax: 202-585-8080